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STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

Case #: CWA - 206436

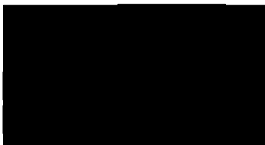
PRELIMINARY RECITALS

Pursuant to a petition filed September 26, 2022, under Wis. Admin. Code, §HA 3.03, to review a decision by the TMG to deny a requested service under the Include, Respect, I Self-Direct (IRIS) program, a hearing was held on January 10, 2023, by telephone. Hearings set for November 22 and December 14, 2022 were rescheduled at the petitioner's request.

The issue for determination is whether the requested service met the criteria for approval.

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: Lindsay Saatkamp
TMG
1 S. Pinckney St., Suite 320
Madison, WI 53703

ADMINISTRATIVE LAW JUDGE:

Brian C. Schneider
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a 20-year-old resident of Portage County. She is eligible for the IRIS program with TMG as her consulting agency.
2. Petitioner is wheelchair-bound and is unable to climb and descend stairs. In July, 2021, petitioner's mother inquired about access to the basement in the home. At the time the basement was unfinished, so the need for access was questioned by the agency and not acted upon further.
3. On November 12, 2021, an Accessibility Assessment was done by Midstate Independent Living Choices, specifically to assess an inaccessible bathroom. Petitioner's mother brought up basement access again, but the assessor said no assessment was called for at that time.
4. The stair lift came up again in the spring, 2022. Petitioner's mother obtained an estimate from a provider from Wisconsin Rapids, and then obtained an estimate from Access Elevator after being told by her consultant that the company was approved.
5. On May 31, 2022, petitioner mother inquired about the stair lift again. The consultant told her that an Accessibility Assessment would have to be completed along with a One-Time Expense request because the cost would push petitioner's expenses above her IRIS budget amount.
6. On June 9, 2022, petitioner's mother met with her consultant at the home. She showed the consultant the newly installed stair lift; she had paid for it with her own funds but requested reimbursement from IRIS. It was installed on May 31, 2022.
7. On July 13, 2022, TMG sent petitioner a notice informing her that the cost of the stair lift would not be covered by IRIS because it was not installed with IRIS program approval.

DISCUSSION

The IRIS program was developed pursuant to a Medical Assistance waiver obtained by the State of Wisconsin, pursuant to section 6087 of the Deficit Reduction Act of 2005 (DRA), and section 1915(j) of the Social Security Act. It is a self-directed personal care program.

The federal government has promulgated 42 C.F.R. §441.450 - .484 to provide general guidance for this program. Those regulations require that the Department's agent must assess the participant's needs and preferences (including health status) as a condition of IRIS participation. *Id.*, §441.466. The Department's agent must also develop a service plan based on the assessed needs. Further, "all of the State's applicable policies and procedures associated with service plan development must be carried out ..." *Id.* §441.468.

The IRIS Policy Manual, §5.4, provides guidance on coverage of supports and services under the program. Covered supports and services are those that enhance the person's opportunities related to living arrangement, relationship, community inclusion, work, and functional medical status. An item must meet all three of the following criteria:

- a. It must be designed to meet the person's functional, vocational, medical, or social needs and also advance the desired outcomes in the individual service plan;
- b. It must be documented on the service plan;
- c. It cannot be prohibited by statutes or regulations.

Home modifications such as the one requested are found in the policy documents under "One-Time Expenses." IRIS Policy Manual, §5.8. "If the actual support costs exceed the estimated budget, DHS has a budget amendment and one-time expense process to increase the budget upon approval." *Id.* For home

modifications, quotes from at least three providers must be obtained and submitted with the request, and modifications not recommended in the accessibility assessment are excluded. Manual, §5.8A.

Thus, to have a home modification covered by IRIS when its provision would result in expenses to rise above the participant's budget, (1) an accessibility assessment must be completed, (2) three estimates must be submitted, and (3) a one-time expense/budget amendment request must be made with the state agency. In this case, none of those steps were taken. Although there was some discussion of a stair lift in 2021, the accessibility assessment done then was for an upstairs bathroom renovation. The assessor refused to do the stair lift assessment because one was not included in the assessment order. After the assessment for the bathroom was completed, no case comments on petitioner's case mentioned the stair lift until May 31, 2022. I acknowledge that there must have been some discussion about it because petitioner did obtain two estimates, but it is evident that the discussions did not arise to the status of a formal request.

I conclude that the agency correctly denied petitioner's request for reimbursement of the cost of the stair lift that she installed on her own volition. None of the three steps required for approval were completed. While petitioner was frustrated by the slow movement by her consultant in getting the process going, her remedy was to file an agency grievance, not to simply have the modification done on her own. See Manual, §11.4: "A grievance is a formal complaint, based on an act, dispute, or omission concerning a participant's rights, services or with the IRIS program in general."

I acknowledge that petitioner provided two fair hearing decisions in which the judge granted coverage of a service that was not first approved. The first one, CWA-171388, frankly is just wrong. Of particular note is the statement on page 3: "Indeed, a person would never get a new service, unless the Individual Support and Service Plan were amended to include that service." That statement was meant to show the absurdity of the agency's argument that the service should not be covered because it was obtained without agency approval. Unfortunately, amending the Plan to add a new service is the mandated process, and the judge simply ignores that fact because the petitioner's position was sympathetic.

The second decision, CWA-200052, is less egregious. The petitioner did a home modification without first obtaining approval on his service plan. The judge states on page 4: "I have been unable to find a specific policy that prohibits a participant from requesting coverage for an item that was obtained prior to being included in the ISSP...." That statement belies the §5.4 policy cited above that an item "must be documented on the service plan." However, that case differs from this one in that the cost of the modification was within the participant's IRIS budget, so a budget amendment would not have been required. I note that both of the participants in the two cases also ignored the grievance process, so I question further the viability of the decisions as indicators of Department policy.

CONCLUSIONS OF LAW

The agency correctly denied petitioner's request for reimbursement of a home modification completed without agency approval.

THEREFORE, it is

ORDERED

That the petition for review is hereby dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 4822 Madison Yards Way, 5th Floor North, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

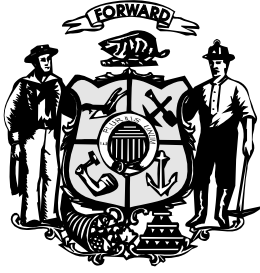
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 17th day of January, 2023



Brian C. Schneider
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 17, 2023.

Bureau of Long-Term Support